

# COMMONWEALTH OF VIRGINIA

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## VIRGINIA HOUSING COMMISSION

### SUMMARY

#### **Continuing Care Retirement Communities Sub-Work Group Senate Room A, General Assembly Building June 14, 2012; 10:00 A.M.**

**Legislators present:** Senator George L. Barker, *Chair*; Senator Mamie Locke, *VHC Vice Chair*

**Citizen members present:** Bill Axselle, *Erickson Retirement Community*; Mary Lynne Bailey, *Virginia Health Care Association*; Al daCosta, *Virginia Baptist Homes Foundation Resident*; Chip Dicks, *Realtor Association*; Daryl Hepler, *State Corporation Commission, Bureau of Insurance*; Ron Herring, *Glebe Resident*; George High, *Westminster Resident*; H. Donald Nelson, *Windsor Meade Resident*; Dana Parsons, *Virginia Association Nonprofit Homes for the Aging*; Jim Rothrock, *Dept. of Rehabilitation Services*; A. Prescott Rowe, *Cedarfield Resident*; Peter T. Straub, *Greenspring Retirement Community*; Pia Trigiani, *Common Interest Communities Management Fund*; and Amy Marschean, *Department of Rehabilitation Services*

**DLS staff present:** Elizabeth Palen, *VHC Director*; Iris Fuentes; Laura Perillo

#### **I. Welcome and Call to Order**

- **Senator George Barker, Chair** called the meeting to order at 10:01 A.M.

#### **II. Explanation of Sub-Work Group's Purpose**

- **Sen. Barker** stated that during the 2012 Session, some legislation was proposed regarding fiscal responsibility and financial transparency of Continuing Care Retirement Communities ("CCRCs,") but was ultimately rejected. Sen. Barker explained that he and the other legislators would ideally like all CCRC stakeholders to be in agreement about the prevailing issues by the end of the workgroup--whether or not the workgroup's efforts result in the creation legislation. Sen. Barker explained that at the very least, the purpose of the CCRC workgroup is to educate stakeholders of the various perspectives on the issues and to make all stakeholders aware of the various options available to solve the issues. Sen. Barker explained that the Virginia Housing Commission is conducting this study because it deals with related and similar issues regularly, such as those affecting Virginia's common interest communities. He explained that the objective for this first workgroup meeting is to

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SENATOR MAMIE E. LOCKE  
SENATOR JOHN C. WATKINS  
SENATOR GEORGE L. BARKER

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"flesh out the issues," to figure out what similar workgroups have studied in the past, and determine what legislation, if anything, the workgroup will submit to the VHC (and potentially to the General Assembly). Sen. Barker explained that the members of the workgroup were selected for their diverse perspectives. Sen. Barker encouraged the members of the workgroup and public to share their suggestions regarding on what topics the workgroup should focus.

### **III. Fiduciary Responsibilities of Continuing Care Retirement Communities; role of residents in protection of contractual obligations provided to the residents**

- **Sen. Barker** asked the resident-members of the workgroup to state what issues they would like to discuss during and research for the forthcoming meetings.
  - **Mr. H. Donald Nelson**, *Windsor Meade Resident*; volunteered that living in a CCRC adds years to people's lives and that there are various wonderful things about CCRCs. Mr. Nelson continued, stating that he has three issues: (1) a lack of transparency regarding financial stability, (2) denial for resident on the board of directors, and (3) deficiencies in management of the board of directors.
  - **Mr. A. Prescott Rowe**, *Cedarfield Resident*; volunteered that he is concerned about his CCRC's (1) financial viability and (2) disclosures of financial information. Mr. Rowe claimed that his CCRC has not properly disclosed financial information to its residents. Mr. Rowe further indicated that Cedarfield is unique because they are organized under the corporate umbrella.
    - **Ms. Dana Parsons**, *Virginia Association of Nonprofit Homes for the Aging*; replied that disclosure requirements are clearly outline in the law and that CCRCs comply with that law. Additionally, Ms. Parsons explained that CCRCs are legally required to provide annual disclosure statements, and that they do so. Ms. Parsons stated that residents agree to these terms in their contract and are encouraged to bring an attorney when they sign their documents to enter a CCRC. Ms. Parsons stated that she is unsure what is broken regarding the CCRCs regulation and what the workgroup is attempting to fix.
    - **Sen. Barker** replied that he thinks it is important to hear all the issues and then decide on which issues regarding CCRC's the workgroup is going to focus its energies toward resolving.
  - **Mr. Nelson** stated that his CCRC's fiscal year ends in May and in August, residents sign for a book at the concierge desk that has a fiscal outline. Mr. Nelson explained that unless a resident is a lawyer or a CPA, it is unlikely that they understand or could understand the outline. Mr. Nelson stated he would like to know who in Richmond is reading the outlines and making sure everything is appropriate and complete. Mr. Nelson continued, stating that the quarterly meetings are a good idea, but only if they are implemented by the facility.
    - **Sen. Barker** answered that in future meetings the workgroup will discuss who is reading the fiscal disclosures and ensuring they are appropriate regarding both timeliness and comprehensiveness.

- **Mr. Ron Herring, *Glebe Resident***; stated that as a result of the recession, the context is different regarding what are the most important CCRC issues. Mr. Herring stated that he is concerned about how entry fees are used because there are no restrictions. Mr. Herring stated that currently, there is no way one can eliminate the risk of the entry fee being used without having direct benefit to the resident. Mr. Herring stated that currently, entry fees can be attached in a bankruptcy settlement, which is what The Glebe (Mr. Herring's residence) did. Mr. Herring asked whether there should be regulations regarding how the entry fees are used. Mr. Herring explained that the current process leaves the resident out of any negotiation and without protections regarding the money they pay into the community. Mr. Herring also stated that another issue is properly implementing any legislation in place currently or in the future. Mr. Herring cautioned the workgroup members that if they produce law, they must make sure that it is enforceable.
  - **Sen. Barker** stated that the workgroup will be explained the procedure of the review process in the future.
  - **Ms. Parsons** stated that while there may be concerns regarding the use of entry fees, no CCRC resident in Virginia has ever been asked to leave their CCRC based on financial concerns.
  - **Mr. Peter T. Straub, *Greenspring Retirement Community***; stated that there are two general ways to deal with the entry costs depending on who assumes the risk. Mr. Straub explained that because the CCRC is established and the residents are entering an established organization, it makes sense that the residents would assume the risk. Mr. Straub stated that if the CCRC would assume the risk, the entry fees could be used to create a trust and pay out to residents' heirs upon death. However, Mr. Straub acknowledged that since most residents will not found their own CCRC the preference is to put the risk on the residents. Given the fact that the systems in place put the risk on the residents, Mr. Straub stated that it would be nearly impossible to switch over the risk to the organization.
- **Sen. Barker** asked the applicable workgroup members to explain the various procedures and regulations set in place for CCRCs and other concerns regarding further regulating CCRCs.
  - **Mr. Straub** stated that is difficult to talk about CCRCs collectively, because they are very diverse communities. Mr. Straub stated that even within a single CCRC, there is much diversity as a result of its various components: independent living, assisted living, and nursing care. Mr. Straub explained that most of the studies regarding CCRCs that have already been conducted focus on the "nursing home concept." Mr. Straub stated that aside from the fact that CCRC members put money into the community; CCRCs are vastly different from nursing homes.
    - **Sen. Barker** replied stating that the studies were mostly on the nursing home component of CCRCs and that there are many more regulations on nursing homes. Sen. Barker stated that this workgroup should focus

on CCRCs holistically, including all of its components. Sen. Barker explained that the workgroup is unique in its focus on CCRCs.

- **Mr. Al daCosta**, *Virginia Baptist Homes Foundation Resident*; explained his concerns regarding the parameters of the workgroup. Mr. daCosta cautioned the members of the workgroup from thinking in a partisan manner or passing legislation that might result in higher regulation and higher costs to residents. Mr. daCosta explained that many members of CCRCs live on a fixed income and that increasing costs could jeopardize membership. Furthermore, Mr. daCosta stated that individual CCRCs are extremely different from one another and that it would be very difficult to pass any legislation that properly address this diversity.
  - **Sen. Barker** replied that Mr. daCosta raised interesting points regarding the fiscal issues as well as the reality that not all laws will fit the diverse needs of every CCRC.
- **Mr. Bill Axselle** stated that prior to a CCRC beginning operation, it must follow a specific procedure which includes providing disclosure agreements and various other documents to promote transparency. Mr. Axselle posited that perhaps the issue is not the initial disclosure but the CCRCs ongoing disclosures. Mr. Axselle explained that each year CCRCs are required to file statements and make these statements available by residents' written notice at no cost. Mr. Axselle stated that the statements should discuss changes from the previous year to the coming year and have a general overview of the CCRCs plan. Mr. Axselle stated that the statement must be amended during the year if something changes. According to Mr. Axselle, where a CCRC does not file the correct and current statement, the State Corporation Commission may take legal action with penalties such as fines and injunctions. Mr. Axselle explained that the Commission looks at the financial stability of the CCRC and determines whether the CCRC is doing well. Mr. Axselle continued stating that the Commission has the ability to make appropriate action on behalf of residents. Mr. Axselle also explained that residents are permitted to organize themselves if they choose and that the board of directors must hold meetings at least quarterly where the residents are represented as elected by the residents. Mr. Axselle stated that where these issues include expenditures, residents are entitled to seven days' notice prior to the meeting. Mr. Axselle proposed that the law may be adequate but that the system is not working.
  - **Sen. Barker** stated that he agrees with Mr. Axelle's assessment. Sen. Barker stated that because CCRCs are regulated in a lot of different ways, the workgroup should look at the law and see if the problem lies there or elsewhere. Sen. Barker stated that perhaps the law is sufficient, and the problem lies with how the facilities are being run. Sen. Barker stated that the workgroup should remain collaborative and cooperative and try to determine at what level the solution lies.
- **Ms. Pia Trigiani**, *Common Interest Communities Board*; stated that CCRCs are currently regulated regarding disclosures, but that the Real Estate Division is responsible for these regulations, not the Common Interest Communities ("CIC") Board. Ms. Trigiani stated that CIC has minimal oversight regarding

enforcing CCRC operations, because CCRCs' governing bodies have developed a variety of formats. Accordingly, Ms. Trigiani stated that these different formats and their resulting procedures make universally applicable regulations difficult to create. Ms. Trigiani stated that people need to be aware of and fully understand what they are buying when they buy into a CCRC or other CIC.

- **Ms. Daryl Hepler**, *State Corporation Commission, Bureau of Insurance*; stated that the Bureau of Insurance reviews CCRCs' disclosure statements to make sure the applicable code sections are clearly set forth therein. Ms. Hepler stated that the Bureau looks at the financial aspects of the disclosure statements and ensures that they are complete and properly calculated. Ms. Hepler stated that the Bureau's financial regulation over CCRCs is limited to temporary injunctions and restraining orders.
- **Sen. Barker** asked whether any other members of the workgroup had issues. Hearing none, Sen. Barker stated that given his experience working with CCRCs, he knows there are a lot of great aspects of CCRCs in Virginia. Sen. Barker encouraged the workgroup to remain positive so that the workgroup can move towards improving the aspects of CCRCs that are not working. Sen. Barker also stated that the workgroup may decide not to change anything, but that the members must first be educated.

#### **IV. Atlantic Shores Cooperative Retirement Community; role of residents in the Cooperative community and ways management upholds Fiduciary Duties to residents**

- **Ms. Alison McKee**, *Kaufman & Canoles Senior Housing and Care Team*; stated that she represents Atlantic Shores Cooperative Retirement Community and that she hopes to provide the workgroup members with a means of comparison between a cooperative and CCRC. Ms. McKee stated that unlike CCRCs, Atlantic Shores is not regulated by the Bureau of Insurance. Ms. McKee stated that Atlantic Shores was developed under an act that is based on the Model Real Estate Cooperative Act, which was enacted largely to accommodate the development of Atlantic Shores. Ms. McKee explained that unlike CCRCs, when a person buys a unit at Atlantic Shores they get a share of stock in the association, a proprietary lease which gives them the right to occupy their unit, and a service agreement.

Ms. McKee explained that the association is governed by a board of directors with five to nine members, and the bylaws require that the majority of the board members are owners. Ms. McKee further stated that the nonresident members, "the independent directors" must have background knowledge of elder housing. Ms. McKee stated that as a result of the specifications, it has been difficult to fill the independent directors' positions. Ms. McKee stated that at Atlantic Shores, the board has public meetings once a month and calls special meeting in between when issues come up. Ms. McKee stated that sometimes there are executive sessions regarding financial hardship or special requests, but that the goal is to be as transparent as possible.

Ms. McKee stated that Atlantic Shores has an active residents' counsel that advises the board of directors. She explained that the counsel's financial committee meetings are well attended. Ms. McKee further stated that the association is required to keep detailed financial records that "shall be made reasonably available to residents and designated agents." Ms. McKee stated that in the late summer, the association must present budgets to the finance committee for its comments. Ms. McKee explained that after the finance committee comments on the budget, it may recommend it to the residents' council or changes may be suggested. Following this, Ms. McKee stated that the residents' council may either change the budget or recommends it to the board. Ms. McKee explained that after the budget is approved by the board, the budget must be presented to the membership as a summary, though the full budget is available to anyone who would like to review it. Ms. McKee stated that where none of the members of the association object, the budget is ratified. Ms. McKee stated that most of the residents of Atlantic Shores are happy with the aforementioned procedure.

- **Sen. Barker** reiterated that Ms. McKee does not represent a CCRC, but a cooperative named Atlantic Shores. Sen. Barker added that understanding cooperatives is important because their governing body and procedure may provide solutions for CCRC problems.
- **Mr. Herring** stated that it would be interesting to see the differences in the laws governing CCRCs and cooperatives and see what about the cooperatives could be implemented for CCRCs.
- **Mr. Nelson** asked Ms. McKee what percentage of the cooperative is owned by developer.
  - **Ms. McKee** stated she is uncertain of the exact number, but estimated that about 20% of the cooperative is still owned by the developer.
- **Mr. Nelson** asked what the difference is between cooperatives and condominium associations.
  - **Ms. McKee** stated that cooperative owners own a fee simple title and a proprietary lease in cooperative ownership, unlike condominium ownership.
- **Mr. Straub** suggested that the workgroup should look at additional forms of common interest communities. Mr. Straub continued, stating that the perhaps some of the other CICs' rules and procedures could be implemented by CCRCs.
  - **Sen. Barker** stated that it is important to remember that there is no ideal model of a CIC and that every model has its own problems.

## V. Public Comment

- **Sen. Barker** asked if any of the workgroup members had further comments or questions. Hearing none, Sen. Barker asked for public comment from members of the audience.
- **Ms. Sandy Levin**, *Virginia Association Nonprofit Homes for the Aging*; stated that she does not know whether it is necessary for the workgroup to address all of the issues presented in the meeting, noting that there are many opportunities for residents to discuss their issues with the CCRC boards. Ms. Levin also asked Mr. Rowe what

information about the CCRC's financial decisions he was given that he found to be insufficient. Ms. Levin asked Mr. Rowe and the other resident-members of the workgroup what information they expected to receive from their respective CCRCs that they did not receive.

- **Mr. Rowe** stated that the residents of his CCRC, Cedarfield, only get partial information regarding its operations. Mr. Rowe explained that he along with many of the residents understand how the fees are determined and what the expenses are. However, Mr. Rowe stated, the residents do not seem to be getting the information they ask for regarding other financial issues, such as how the fees are being spent.
- **Sen. Barker** assured Mr. Rowe and Ms. Levin that the workgroup will discuss what CCRCs are required to disclose and what specific information the residents are seeking to obtain.
- **Mr. Meade A. Spotts**, *Virginia United Methodist Homes, Inc.*; provided the workgroup with an example of the budget documents Virginia United Methodist Homes provides its residents. Mr. Spotts explained that the cumbersome documents are provided to residents in order to comply with regulations. Mr. Spotts asked the workgroup members if they had any suggestions on how to improve the current procedure regarding disclosing budget documents.
  - **Mr. Straub** stated that he believes the language in the budget documents must be clearer and more readable.
  - **Mr. Herring** stated that about 80% of his fellow CCRC residents do not understand the disclosure documents. Mr. Herring continued, stating that many of them would require a CPA or attorney to explain the documents to them, but ask these professionals for their assistance. Mr. Herring finished, stating that the budget disclosure documents are very complex, and it would be helpful if the workgroup could help to reduce the disclosures to concise and complete consumer language.
  - **Mr. Spotts** stated that he agrees that there is a need for simplification so that the residents can understand all the information with which they are presented. Mr. Spotts stated that perhaps the Virginia Housing Commission could provide CCRCs with a template for budget summaries using simpler language so that the communities can comply with disclosure laws and regulations without having to provide large volumes of documents.

## **VI. Adjourn**

- **Sen. Barker** stated that the next meeting will be in August or September and that he expects to have one or two more meetings. Sen. Barker assured the workgroup and audience that he will work with staff to figure out what information they all need to know about CCRCs to best craft a solution. Sen. Barker asked if anyone else had comments or questions.
- Hearing none, Sen. Barker adjourned the meeting at 11:15 A.M.